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IN THE
COURT OF APPEALS OF INDIANA

JACOB WRIGHT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 25A04-0611-CR-656
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FULTON SUPERIOR COURT
The Honorable Wayne E. Steele, Judge
Cause No. 25D01-0303-FC-41

April 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jacob Wright appeals the trial court's order finding that he violated the terms of his probation.

We affirm.

ISSUES

1. Whether the trial court adequately advised Wright of the terms of his probation and secured Wright's acknowledgement of understanding those terms.

2. Whether the trial court erred in admitting evidence.

3. Whether the trial court denied Wright the opportunity to confront and cross-examine witnesses.

4. Whether the State presented sufficient evidence to support the trial court's finding that Wright had violated the terms of his probation.

FACTS

On March 4, 2003, the State charged Wright with the January 16-17, 2003, burglary and theft from an office in Fulton County. On August 13, 2003, pursuant to a written plea agreement, Wright pleaded guilty to burglary, as a class C felony. Wright admitted to the trial court that he had "jimm[ied]" open the door to the building and entered to "take some things from" the office. (Tr. 21, 20).

On October 10, 2003, the trial court imposed a six-year sentence, suspending three years and ordering that Wright serve three years on probation. The trial court specifically advised Wright that, while on probation, he was "to obey the standard rules and conditions of probation," which would "be reviewed with [him]," and that Wright would "get a copy of those." (Tr. 48).

Wright began his probation on October 9, 2005, when he was released from the Department of Correction. On February 28, 2006, Fulton County Probation Officer Stacy Barkman filed a petition to revoke his petition. The petition alleged that Wright had violated the term of his probation that forbade the commission of "another criminal offense" based on having twice been arrested on charges in Carroll County: on November 8, 2005, for the offense of driving while suspended, a class A misdemeanor, and on February 24, 2006, for three counts of theft, as class D felonies. (App. 16).

The trial court held a fact-finding hearing on November 1, 2006. Barkman testified that upon Wright's release on October 9, 2005, he had met with Wright and advised him of the rules of probation. Barkman further testified that in Wright's probation file, there was a copy of the probation rules signed by Wright; and that "term 2" thereof was that Wright "not commit another criminal offense." (Tr. 65).

Also, Barkman identified Exhibit 1 as the Carroll County Probation Department's transmittal to him[1] of the Carroll County Superior Court's CCSs for the three theft charges filed on February 24, 2006, and for the driving-while-suspended charge filed on November 17, 2005. Barkman identified Exhibit 2 as the Carroll County Probation Department's transmittal to him of the inmate book-in record, police department offense report, and police department arrest report regarding Wright's driving-while-suspended arrest on November 4, 2005. Barkman identified Exhibit 3 as the transmittal from the Carroll County Prosecutor of the three informations (file-stamped by the Carroll Superior

[1] Barkman testified that supervision of Wright's probation had earlier been transferred to the Carroll County Probation Department.

Court) charging Wright with theft, and the accompanying probable cause affidavit.[2] Exhibit 4 was identified by Barkman as the transmittal he received from the Carroll Superior Court of the trial court's finding of probable cause to support the driving-while-suspended charge.[3] Barkman identified Exhibit 5 as the transmittal he received from Carroll Superior Court of its finding of probable cause to support the three theft charges.

Wright objected to the exhibits, arguing that the court records had not been certified "as actual court records," were "hearsay," and violated his "right to confront and cross examine witnesses against him." (Tr. 64). The trial court overruled the objections. Barkman testified that Wright's date of birth was the same as that shown on the exhibits from Carroll County. The trial court then found that the State had met its burden of establishing by a preponderance of the evidence that Wright had violated the terms of his probation. It revoked Wright's probation and ordered that he "serve the remaining portion" of his previously suspended sentence. (Tr. 77).

DECISION

1. Advisement of Probation Terms and His Understanding

Wright first argues that the trial court's order must be reversed because he was not advised "in writing at the time of sentencing" of the terms of his probation. Wright's Br. at 3. He reminds us that Indiana Code § 35-38-2-1(a) provides that when the trial court "places a person on probation," it "shall specify in the record the conditions of

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[2] The affidavit states that Wright had admitted to the officer being in possession of stolen property.

[3] Exhibit 4 also contained the probable cause affidavit submitted to the Carroll Superior Court and reporting the circumstances providing probable cause to believe Wright committed the driving offense.

probation," and he cites to *Atkins v. State*, 546 N.E.2d 863 (Ind. Ct. App. 1989), and *Disney v. State*, 441 N.E.2d 489 (Ind. Ct. App. 1982) in support.

In *Atkins*, we found that the intent of the above statutory requirement was "to provide a defendant with prospective notice of the standard of conduct required of him or her while on probation and to prohibit the imposition of additional conditions after sentencing." 546 N.E.2d at 863. However, we held that because "not to commit an additional crime" is "automatically a condition of probation by operation of law without a specific provision to that effect," the statute was not violated when the defendant was neither advised by the trial court of this condition nor given a written statement so providing. *Id.*

In *Disney*, when imposing sentence, the trial court did not state that as a term of his probation, the defendant would be required to pay restitution. We held that restitution as a condition of probation must have been specified "at the time of sentencing," and that the addition of such to the defendant's probation order after sentencing was error. 441 N.E.2d at 492. Because the term of probation at issue here is the commission of a criminal offense, a term "automatically a condition of probation by operation of law," *Atkins*, 546 N.E.2d at 863, we do not find *Disney* apposite.

Citing to *Allen v. State*, 809 N.E.2d 845 (Ind. Ct. App. 2004), Wright further argues that the trial court failed to secure his "acknowledgment that he understood the terms of his probation." Wright's Br. at 7. In *Allen*, the trial court stated on the record that it was imposing certain terms of probation but provided no written advisement thereof. After the State filed a probation violation against Allen, he moved for a

dismissal – "alleging that he had never signed or received the written conditions of probation." 809 N.E.2d at 846.[4] The trial court granted Allen's motion, and we affirmed. As Wright emphasizes, we expressly noted that when the trial court had specified the probation terms to Allen, it "did not ask [him] if he acknowledged and understood the conditions." *Id.* at 848. However, our holding that the trial court did not err in granting Allen's motion for dismissal was based on the fact that Allen "never received a written copy of the conditions of his probation prior to his alleged violation of probation" and the trial court's failure to ask whether Allen "acknowledged and understood the conditions." *Id.*

Here, it is undisputed that Wright was provided the written terms of his probation – Barkman testified that he had a copy of the written terms signed by Wright. At sentencing, the trial court specifically ordered Wright "to obey the standard rules and conditions of probation" and "not to violate the law," and asked Wright whether he had any questions; Wright answered "No." (Tr. 48, 49). Further, we note that earlier in the sentencing hearing, Wright confirmed to the trial court that he was at that time on probation and that he had "had the initial hearing" on a pending petition alleging his violation of probation. (Tr. 17). The pending petition alleged that by being arrested for the January 2003 burglary and theft charges, Wright had violated the "term[] of probation" that he "obey all . . . laws." (App. 254). Based upon these facts and circumstances, we do not find that the order revoking Wright's probation must be

[4] Wright neither filed a motion to dismiss nor made such an argument to the trial court.

reversed because the trial court failed to confirm at the sentencing hearing that Wright understood that his probation required him to obey the law and not commit another criminal offense.

2. Admission of Evidence

Citing in very general terms to what we presume to be Exhibits 1 through 5, Wright argues that hearsay evidence was erroneously admitted "absent any finding of good cause shown for its admission, and absent an attempt to examine the statement's reliability and the state's reason for declining to produce the declarant." Wright's Br. at 9. We cannot agree.

Indiana's Supreme Court has explained that "probationers are not entitled to the full array of constitutional rights afforded defendants at trial." *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). Further, the Sixth Amendment (which provides *inter alia* the right confront witnesses) applies in "all criminal prosecutions." U.S. Const. amend VI. A probation revocation hearing is civil in nature. *Cox*, 706 N.E.2d at 551. Further, Indiana's Rules of Evidence expressly provide that their hearsay provisions "do not apply" in probation proceedings. Ind. Evidence Rule 101(c)(2); *see also Cox*, 706 N.E.2d at 551 (admission of evidence at probation revocation hearing "not subject to the Rules of Evidence"). In probation proceedings, the trial court "may consider any relevant evidence bearing some substantial indicia of reliability." *Cox*, 706 N.E.2d at 551.

Exhibits 1 through 5 were received by Barkman, the official supervising Wright's probation, at the Fulton County Probation Department. The contents of the exhibits had been sent by either the Carroll County Probation Department, or the Carroll County

Prosecutor's Office, or the Carroll Superior Court. The probable cause affidavits had been filed with the Carroll Superior Court, which had then found the affidavits to establish probable cause for the three theft charges and the driving-while-suspended charges filed against Wright. The information in the exhibits was relevant,[5] and the official duties of both the recipient and the senders provides substantial indicia of the reliability of the exhibits' contents. Therefore, the trial court did not err in admitting the exhibits.

3. Right to Confront, Cross-Examine Witnesses

Wright also argues that despite the advisement he received at his initial hearing, stating that at the probation revocation evidentiary hearing he was "entitled to confront and cross-examine the witnesses" against him, the admission of hearsay evidence deprived him of this. (App. 33). As the State responds, Wright was able to confront and cross-examine Barkman, the witness at the hearing. Further, based upon the analytical framework provided by *Cox* and discussed in the foregoing section, we find no reversible error based on any denial of Wright's ability to confront and cross-examine witnesses.

4. Sufficiency of the Evidence

Finally, Wright argues that there was "not sufficient evidence by which the trial court . . . could have found that [he] violated the terms of his probation." Wright's Br. at 17. According to Wright, the State's exhibits "produced allegations that were

[5] "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ind. Evid. R. 401.

speculative" as to whether he had violated a condition of his probation by "committing another crime, namely driving while suspended and theft." *Id.* We are not persuaded.

A probation revocation proceeding "is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence." *Cox*, 706 N.E.2d at 547. Moreover, the "procedures are to be flexible," and "strict rules of evidence do not apply." *Id.* at 550. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any term of probation, we will affirm its decision to revoke probation. *Id.* at 551.

As a condition of probation, Wright was prohibited from committing any criminal offense. On November 4, 2005, Wright was arrested in Carroll County for driving-while-suspended, a class A misdemeanor criminal offense. On November 17, 2005, a probable cause affidavit was submitted to the Carroll Superior Court, stating that Wright had operated a vehicle on a public highway on November 4, 2005, that Wright's "driving privilege" at the time was "suspended" – Wright having been "convicted of Driving While Suspended on" February 9, 2003, in Fulton Superior Court. (Ex. 4). The Carroll Superior Court then "determine[d] that probable cause d[id] exist" to support charging Wright with "Driving While Suspended, a Class A Misdemeanor." (Ex. 4). On February 24, 2006, informations were filed in Carroll Superior Court alleging that Wright had committed three separate theft offenses, class D felonies. A six-page probable cause affidavit was filed with the court, reporting the evidence that led the affiant to conclude that Wright had committed three theft offenses.

The Carroll Superior Court then "determine[d] that probable cause d[id] exist" to charge Wright with three counts of theft, as class D felonies. (Ex. 5). Based upon this evidence presented to the trial court, we find that the State did present sufficient probative evidence to support the trial court's revocation of probation.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.